IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.4794 of 2006**

DATE OF DECISION: August 7, 2006

SMT. NEHA MITTAL AND ANOTHER ...PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. ARUN JAIN, ADVOCATE WITH
MR. R.K. JAIN & MR. H.O. SHARMA, ADVOCATE
FOR THE PETITIONERS.

MR. S.K. BISHNOI, SR.DAG, HARYANA.

ASHUTOSH MOHUNTA, J.

Challenge in this petition under Articles 226/227 of the Constitution of India is to the notification dated 19.1.2006 (Annexure P-2) as well as to the notification dated 20.1.2006 (Annexure P-4), issued under Sections 4 & 6 respectively, of the Land Acquisition Act, 1894 (for short 'the Act') whereby the land owned by the petitioners measuring 0.26 acres or 2 Kanals 1 Marla or 1230 sq. yards falling in Khasra No.54/30 (Khewat No.40, Khatoni No.41) situated in village Bhainsa Tibba, Tehsil and District Panchkula, has been sought to be acquired for the construction of 60 Metre wide road for Sector 6, Mansa Devi Complex, Panchkula.

A notification under Section 4 of the Act was issued on

19.1.2006, (Annexure P-2) whereby the State of Haryana proposed to acquire the land owned by the petitioners situated in village Bhainsa Tibba (details of which have been given above) for the public purpose, i.e., for the development and utilization of the land for construction of 60 Metre wide road for Sector 6 at Mansa Devi Complex, Panchkula. The urgency provisions contained in Section 17 of the Act were put into operation after dispensing with the provisions of Section 5-A. Thereby the petitioners were denied the opportunity to file objections to the acquisition of land proposed to be acquired. Rapat Roznamcha No.207 dated 26.1.2006 was recorded with regard to the acquisition of the land in question and a copy of the notification was affixed in the office of the Tehsildar and the Patwarkhana. Declaration under Section 6 of the Act vide notification dated 20.1.2006 (Annexure P-4) was made. It is the case of the petitioners that on the land owned by them three plots, i.e. 2-P, 3-P and 4-P, have been carved out, which have not been allotted to anyone, whereas the adjacent plots 1-P, 5-P, and 6-P have been allotted to three different persons. It is further the case of the petitioners that in the same pocket of land there exists an old temple, the premises of which have covered about 12-13 plots, has not been made the subject of acquisition. The petitioners have annexed with this petition a copy of the plan (Annexure P-5) in order to show the ground realities. On this basis it has been contended that no useful purpose would be served by acquiring the land owned by the petitioners as the same is not being used for the alleged public purpose which has been mentioned in the impugned notifications. Thus, a prayer has been made to release their land from acquisition.

It has been contended by Mr. Arun Jain, learned counsel for the

petitioners, that the land of the petitioners which has been proposed to be acquired does not cause any obstruction or come in the way where the proposed construction of 60 metre wide road in Sector 6 of the Mansa Devi Complex is to be made. Moreover, it has been contended that plots on both sides of the land in question have been allotted to persons for residential purposes and, thus, no useful purpose would be served by making acquisition of the land owned by the petitioners as the same falls out of the purview of the proposed construction of 60 metre wide road on the spot.

A detailed written statement has been filed to controvert the contentions raised on behalf of the petitioners. In para 8 of the written statement it has been averred that the land of the petitioners falls adjacent to the already acquired land and it has been felt by the government that it is an obstacle in the scheme of the government and there is a great need of 60 metre wide road for the locality of Sector 6, Mansa Devi Complex, Panchkula. It has further been contended by the counsel appearing on behalf of the State of Haryana that it is the subjective satisfaction of the government which area is to be acquired or not. The challenge to the acquisition can only be made in case there are procedural irregularities or illegalities. According to him, the Court can only interfere in such like cases and not otherwise. With these averments it has been contended that the present petition is without any merit and the same may be dismissed.

We have heard the learned counsel for the parties and perused the case file with their assistance. We have also examined the site plan (Annexure P5) annexed with the petition. In the present case the land owned by the petitioners is in triangular shape, which has been shown in sky blue colour in the site plan (Annexure P-5) annexed with the petition,

which is proposed to be acquired for construction of 60 metre wide road in Sector 6, Mansa Devi Complex, Panchkula. Undisputedly, the proposed 60 metre wide road is situated by the side of the residential plots. Substantial portion of the land owned by the petitioners forms part of plots 4-P and 3-P and a small portion of it comes in plot 2-P. On both sides of these plots are plot Nos.1-P, 5-P and 6-P, which have undisputedly been allotted to three different persons named in the petition. If 60 metre wide road is proposed to be constructed by a side of the residential plots, the land owned by the petitioners, which forms part of plot Nos.3-P and 4-P, does not need to be acquired. Thus, it would be quite apposite in case authorities acquired only that portion of the land owned by the petitioners which is necessary to be acquired for the construction of the proposed 60 metre wide road in Sector 6, Mansa Devi Complex, Panchkula. The rest of the land, which is beyond the limits of the purpose mentioned in the impugned notifications, need not be acquired. No doubt, it is the subjective satisfaction of the authorities which area of the land is to be acquired, but it does not mean that the authorities can act in an arbitrary manner in the matter of acquisition of land. The Courts can always assess the action of the concerned authorities on the touchstone of reasonability. In the present case, the purpose shown in the impugned notifications is the construction of 60 metre wide road in Sector 6, Mansa Devi Complex, Panchkula. It does not mean that to fulfill that purpose, the authorities can acquire area which is far beyond the limits of 60 metre wide road. In the present case a substantial portion of the area owned by the petitioners forms part of plot Nos.3-P and 4-P and a very small portion of the land owned by them forms part of plot No.2-P. The rest of the area owned by the petitioners comes in the way where the 60 metre

wide road has been proposed to be constructed. In view of this situation, it will be in the fitness of things if the authorities are allowed to acquire only that portion of the land owned by the petitioners which comes in the way of 60 metre wide road proposed to be constructed in the area.

Consequently, we partly allow the writ petition with a direction that the land owned by the petitioners which comes in the way of the road proposed to be constructed and also the portion of the land which forms part of Plot No.2-P shall remain acquired. Rest of the land of the petitioners shall stand released from acquisition as it does not fall within the 60 metre wide road alignment and the plot.

(ASHUTOSH MOHUNTA)
JUDGE

August 7, 2006
Gulati

(NIRMAL YADAV)
JUDGE